IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

ST.Rev..No. 108 of 2005()

TA.455/2002 of S.T.A.T.ADDL.BENCH,ERNAKULAM

REVISION PETITIONER APPELLANT: REVENUE

STATE OF KERALA, REP. BY
JOINT COMMISSIONER (LAW),
COMMERCIAL TAXES, ERNAKULAM.

BY GOVERNMENT PLEADER FOR TAXES SRI.V.V.ASHOKAN

RESPONDENTS: ASSESSEE:

KIZHAKKAMBALAM TOURIST HOME,
KIZHAKKAMBALAM.

BY ADV. DR.K.B.MUHAMED KUTTY (SR.)
SRI.K.M.FIROZ

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 14/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN,J.

S.T.REV. NO. 108 OF 2005

Dated this the 14th June, 2007

JUDGMENT

H.L.DATTU, C.J.

Since the issue raised in this revision petition is now covered by a Full Bench of this Court, though the matter is posted for orders today, the matter has taken up for final hearing.

2. The Revenue is questioning the correctness or otherwise of the orders passed by the Kerala Sales Tax Appellate Tribunal, Ernakulam in T.A.No.455 of 2002, for the assessment year 1998-99, dated 4.6.2003.

3. The Revenue has raised the following question of law for our consideration and decision. It is as under:

> "Whether on the facts and in the circumstances of the case, the Tribunal is justified in holding that soda and soft drinks sold at bar attached hotel, taxable only @ 6% as per Entry 40 of the First Schedule?"

4. The Tribunal in the impugned order has concluded that the sale of soda to be taxed under Entry 40 of the First Schedule to the Kerala General Sales Tax Act.

5. A Full Bench of this Court in **Lazarus Alosius** v. **State of**

Kerala (2005 (2) KLT 604(FB)) has observed as under:

> "Relevant is the word `beverages'. In generic sense, any potable liquid except water is a beverage. Beverage may be alcoholic or non-alcoholic. Again, among non-alcoholic, it may be not beverage like tea, coffee or cold beverage like cola and soda. Beverages like cola and soda come within the meaning of `aerated waters'. Aerate is process of exposing product to air for the purpose of mixing with air. Water mixed or charged with gas or air under pressure is `aerated water'. Soda is aerated with carbon dioxide. Thus, it is clear that `aerated water' is a special word to the general word `beverage' and soda is a specific word to the word `aerated water'. We need to examine whether the Legislature intended to employ the generic word `beverage' in Entry 40/46 to cover all beverages. It is controlled by the preceding word `cooked food'. Soda is not a beverage, which can be said to be *egusdem generis* with cooked food. Only drinks like tea and coffee can be brought within the meaning of `beverage' as being releted and inclusive of cooked food Entries 40/46. Soda cannot be brought within the Entries 40/46 of Schedule I of the K.G.S.T.Act."

6. In view of the law declared by the Full Bench of this Court, in our opinion, the reasoning and conclusion reached by the Tribunal that the sale of soda is taxable under Entry 40 of the First Schedule to the KGST Act cannot be accepted by us. Therefore, the question of law raised by the Revenue requires to be answered in favour of the Revenue and against the

assessee. It is made clear that the sale of soda is taxable under Entry 87 of the First Schedule to the KGST Act.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/

H.L.DATTU, C.J. & K.T.SANKARAN,J.

C.M.APPL. NO. 206 OF 2005 IN
S.T.REV. NO. 108 OF 2005

Dated this the 14th June, 2007

O R D E R

H.L.DATTU, C.J.

Learned counsel appearing for the respondent has no serious objection to condone the delay in filing the revision petition. Therefore, the delay in filing the revision petition is condoned.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/